

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK S. ANDERSON,

Plaintiff,

Case No. 1:06-cv-714

v.

Honorable Wendell A. Miles

STATE OF MICHIGAN,

Defendant.

OPINION AND ORDER

This matter is before the court on Plaintiff's Motion for Reconsideration (docket #15), seeking reconsideration of the court's opinion and judgment (docket ## 12, 13) adopting the magistrate judge's recommendation to dismiss this action.

Plaintiff filed this action under the Declaratory Judgment Act, 28 U.S.C. § 2201, claiming he was convicted under a state statute that was enacted in violation of the Michigan State Constitution and state rules of procedure. The court agreed with the magistrate judge that it lacked jurisdiction over Plaintiff's claim. After reviewing Plaintiff's complaint, the report and recommendation, and Plaintiff's present arguments, the court finds no error in its decision.

A state prisoner's challenge to the fact or duration of his confinement must be raised by a habeas corpus petition after state remedies have been exhausted, not by a complaint for declaratory judgment. See Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973). However, a claim that a state criminal law was passed in violation of the state Constitution is not cognizable in either a section 1983 action or a habeas corpus action. Estelle v. McGuire, 502 U.S. 62, 71

(1991) (error under state law cannot form basis for federal habeas corpus relief); Baker v. McCollan, 443 U.S. 137 (1979) (federal civil rights complaint may not be brought to redress violations of state law). If Plaintiff has a meritorious claim, which the court is not deciding, his remedy lies in state court.

For the foregoing reasons, the court DENIES Plaintiff's Motion for Reconsideration (docket #15).

So ordered this 13th day of December, 2006.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge